

United States Court of Appeals
for the Fifth Circuit

United States Courts
Southern District of Texas

FILED

April 13, 2021

Nathan Ochsner, Clerk of Court

No. 21-20018



A True Copy
Certified order issued Apr 13, 2021

Styl W. Cuyca
Clerk, U.S. Court of Appeals, Fifth Circuit

BRADLEY GARRETT,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-3363

Before STEWART, CLEMENT, and GRAVES, *Circuit Judges.*

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

In this habeas corpus case filed by a state prisoner, the final judgment was entered and certificate of appealability was denied on November 29,

No. 21-20018

2018. Therefore, the final day for filing a timely notice of appeal was Wednesday, January 2, 2019 because the thirtieth day was a Saturday, followed by Sunday and two federal holidays. *See* FED. R. APP. P. 26(a)(1)(C). The petitioner's pro se notice of appeal is dated December 22, 2020 and stamped as filed on January 4, 2021. Because the notice of appeal is dated December 22, 2020, it could not have been deposited in the prison's mail system within the prescribed time. *See* FED. R. APP. P. 4(c)(1) (prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing). When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988). Accordingly, the appeal is DISMISSED for want of jurisdiction.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 13, 2021

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

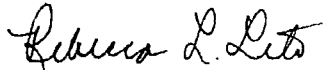
No. 21-20018 Garrett v. Lumpkin
USDC No. 4:17-CV-3363

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

cc: Mr. Bradley Garrett
Mr. Edward Larry Marshall